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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re WOLFGANG S., a Person Coming Under the Juvenile Court Law.	
SAN DIEGO COUNTY HEALTH AND HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. BRADLEY S., Defendant and Appellant.	D050103 (Super. Ct. No. J513669C)

APPEAL from a judgment of the Superior Court of San Diego County, Julia Craig Kelety, Judge. Reversed and remanded with directions.

In this dependency case of Wolfgang S., his parents' paternity questionnaires, filed the day of the November 2000 detention hearing, stated his father, Bradley S., had Cherokee heritage. At the hearing, Bradley's counsel stated, "[Bradley] does report that he does have some Cherokee blood, that he is not a member of ─ a registered member of

a tribe." The court found the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.) did not apply. The applicability of ICWA was not addressed at subsequent hearings. No ICWA notice was ever given.

Bradley appeals the December 8, 2006 judgment terminating his parental rights. His opening brief contends the juvenile court erred by finding at the detention hearing that ICWA did not apply, and there is no substantial evidence the court and the San Diego County Health and Human Services Agency (the Agency) complied with their affirmative and continuing duty to make further inquiries and provide notice to Cherokee tribes.

Counsel for Bradley, Wolfgang and the Agency have filed a stipulation for reversal of the judgment terminating parental rights. The parties request this court remand the case with directions to (1) vacate the findings made and orders issued on December 8, 2006; (2) set a Welfare and Institutions Code section 366.26 hearing date; (3) require the Agency to give notice, in accordance with ICWA and current case law, to the Bureau of Indian Affairs (BIA); the Cherokee Nation, Oklahoma, the Eastern Band of Cherokee Indians of North Carolina, and the United Keetoowah Band of Cherokee Indians in Oklahoma (72 Fed. Reg. 13648-01 (Mar. 22, 2007)); and after notice is given and received, if Wolfgang is determined not to be an Indian child for purposes of ICWA, reinstate the findings and orders of December 8, 2006. The parties also request immediate issuance of the remittitur. We accept the stipulation in part and reverse. (Code Civ. Proc., § 128, subd. (a)(8); *In re Francisco W.* (2006) 139 Cal.App.4th 695,

711; *In re Jonathan D*. (2001) 92 Cal.App.4th 105, 111-112; *In re Rashad H*. (2000) 78 Cal.App.4th 376; Cal. Rules of Court, rule 8.272(c)(1).)

"An appellate court shall not reverse or vacate a duly entered judgment upon an agreement or stipulation of the parties unless the court finds both of the following: [¶] (A) There is no reasonable possibility that the interests of nonparties or the public will be adversely affected by the reversal. [¶] (B) The reasons of the parties for requesting reversal outweigh the erosion of public trust that may result from the nullification of a judgment and the risk that the availability of stipulated reversal will reduce the incentive for pretrial settlement." (Code Civ. Proc., § 128, subd. (a)(8).)

There is no reasonable possibility that reversal will adversely affect the interests of the public or nonparties. A stipulated reversal will facilitate the process of ensuring proper ICWA notice, and will lessen the delay before a final determination regarding termination of parental rights. This will benefit Wolfgang's prospective adoptive parents. (*In re Rashad H, supra,* 78 Cal.App.4th at pp. 380-381.) It will also benefit relevant Indian tribes, should ICWA be found to apply. Although this is a confidential proceeding, the public has an interest in providing permanency for children as expeditiously as possible. A prompt resolution of the appeal also reduces the expense to the taxpaying public.

The reason the parties request reversal is to allow compliance with ICWA. Because a stipulated reversal will expedite that compliance, the public trust will not be eroded. On the contrary, public trust in the courts and their judgments will be advanced by knowing that the Agency, counsel and the courts will seek to correct errors promptly

and reasonably, avoiding delays that might affect children and families. (Cf. *In re Rashad H.*, *supra*, 78 Cal.App.4th at p. 381.) The parties' agreement that the judgment must be reversed to provide proper ICWA notice will not lead to a risk of reducing any incentive for pretrial settlement. (*Ibid.*)

DISPOSITION

The judgment terminating parental rights is reversed and the matter is remanded to the juvenile court, with directions to order the Agency to give notice in compliance with the notice provisions of ICWA. The juvenile court is further directed to order the Agency to give notice in accordance with current case law to the BIA; the Cherokee Nation, Oklahoma; the Eastern Band of Cherokee Indians of North Carolina; and the United Keetoowah Band of Cherokee Indians in Oklahoma. If, after proper ICWA notice is given and received it is determined Wolfgang is an Indian child, the juvenile court shall proceed in conformity with all provisions of ICWA. If, after notice is given and received

Wolfgang is determined not to be an Indian child for purposes of ICWA, the juvenile court shall reinstate the findings and orders of December 8, 2006. The remittitur is to issue forthwith.

McDONALD, J.

WE CONCUR:

McCONNELL, P. J.

AARON, J.